DOCUMENT RESUME

ED 156 344 PS 009 991

AUTHOR Morgan, Gwen G.
TITLE Federal Day Care Standards and the Law.
SPONS AGENCY Department of Health, Education, and Welfare, Washington, D.C. Office of the Assistant Secretary for Planning and Evaluation.; Department of Health, Education, and Welfare, Washington., D.C. Office of the Secretary.
PUB DATE 15 Aug 77
NOTE 75p.; For related documents, see ED 149 861 and PS 009 986 - PS 010 006

EDRS PRICE MF-$0.83 HC-$3.50 Plus Postage.
DESCRIPTORS Certification; Change Strategies; *Day Care Services; *Early Childhood Education; Family Day Care; *Federal Legislation; *Federal Regulation; Federal State Relationship; Government Role; Law Enforcement; Laws; *Legal Problems; Policy Formation; Sanctions; *Standards; State Standards
IDENTIFIERS *Federal Interagency Day Care Requirements

ABSTRACT

This paper reviews the legal aspects of the Federal Interagency Day Care Requirements (FIDCR). Section I describes the scope of the regulations and the sanctions used to uphold them, namely the withholding or withdrawing of federal funds. This section examines some of the potential legal challenges to the regulations, constitutional issues, special enforcement issues in family day care, the federal-state relationship, and the state of the art in day care licensing. Also included is a general critique of the FIDCR. Section II describes some of the issues and options facing the federal government in the revision and enforcement of the federal regulations. Several strategies are explored as possible ways of improving day care services through the enforcement of the federal standards. The recommendations based on these strategies reflect the following concerns: the relationship between federal standards and state licensing, the content of proposed standards, provisions for inspection and monitoring of programs, and the federal role in the development and improvement of day care services in the next ten years. (BD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED156344

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

FEDERAL DAY CARE STANDARDS AND THE LAW

PS 009991

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

William R. Prosser

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM"

Gwen G. Morgan
Wheelock College

August 15, 1977

FEDERAL DAY CARE STANDARDS
AND THE LAW

Page Number

SECTION I. STANDARDS AND THE LAW ----------1
What are the Federal Interagency Day Care Requirements ----------1
The Scope of Potential Challenges to FIDCR ----------6
Challenges to Individual Requirements and their Enforcement ----------14
Constitutional Issues in the Standards----------15
Constitutional Issues in the Actions of the Enforcers----17
Special Enforcement Issues in Family Day Care----------20
Critique of FIDCR----------23
FIDCR's Role in Relation to State Licensing----------28
State of the Art in Day Care Licensing----------31

SECTION II. ISSUES AND OPTIONS FOR THE FEDERAL GOVERNMENT----------40
Strategy----------40
Options for the Federal Government----------46
Recommendations----------48

Footnotes

Bibliography

Note: This paper is a shortened version of a longer paper on the same subject prepared on March 15, 1976. For those with an interest in pursuing the topic in depth, the longer version is available.

Parts of the paper, as noted, were written by Barry Mintzer, and other parts lean heavily on unpublished work presented orally by Norris Class.

I am indebted to many friends who have shared their ideas with me, and to many others who reviewed early drafts. The list is too long to include here. Special acknowledgement must be given to Edna Hughes, who led me to understand the importance of the subject of regulation, and who helped me to develop the necessary concepts to understand it.

SECTION I. STANDARDS AND THE LAW

What are the Federal Interagency Day Care Requirements?

When government acts to impose standards, it acts on the basis of a statute, the Constitution, or some common law principle. Before examining the "appropriateness" of FIDCR, HEW needs to spell out their appropriateness to what purpose. Some of the possible legal rationales which have been suggested for FIDCR are: (1) they are federal licensing; (2) they are specifications of the rights of children to quality child care; (3) they are federal child protective intervention; (4) they are standards for consumer protection; or (5) they are purchasing specifications to achieve statutory goals. (1) One thing which is quite clear is that FIDCR are not a form of federal licensing. Licensing, or permission to operate, exists in the states by state law. There is no such statutory basis for FIDCR, and the characteristics of a licensing program are absent. There is no administrative lifting of a legislative prohibition,[1] there is no permit to which a vested interest attaches.

(2) They do not specify children's rights to quality child care, since children as a class have no established right to quality child care. Children do have a right to parental support, which might at some future date be extended to include the right to positive parenting, with government help to parents in meeting that parental obligation. This rationale is preferable to the parens patrise

intervention into the family on a society-to-child model, since it does not undermine family autonomy. One most important need and right of the healthy normal child in a working family should be the right to a family with the self-confidence, autonomy, and economic strength to negotiate and represent the child's interest in dealing with the larger society.[2] But the rights of young children and their families in regard to day care are not established.

(3) They are not federal protective intervention. For the federal government to assume a protective role on behalf of children in day care it would have to assume that parents cannot or will not make such an intervention themselves. Traditionally parens patriae is a power assumed by state government, and the entire court system is organized around the state as the appropriate level of government exercising this power. Tradition and all precedents have set the federal role as one of leadership and assistance to states, which assume the responsibility in child abuse, juvenile delinquency, foster care, and other children's needs. Children in such cases are either without families or at odds with their families. Unlike children in day care, child protection rationale is a poor fit for day care even if the federal government wanted to depart from tradition and take on the protective

role itself. Parens patriae is a dubious principle to use when there is a functioning family.

(4) Since the federal government is involved as a major purchaser of child care, it could be felt that the FIDCR are standards for consumer protection, assuring parents that when they place their children in federally funded child day care, such care will guarantee positive parenting when parents are not available to be with their children. This is an attractive line of reasoning. However, since children's rights are so limited, it is probable that additional legislation would be needed before a consumer protection or children's rights rationale could be used for FIDCR. Although it might be technically possible to extend the protection of the Interstate Commerce Act in this direction, it does not seem likely. And if the effect of FIDCR is to raise prices of child care for non-subsidized parents, or to eliminate some of the present options now being chosen by consumers, it could be argued that FIDCR is undermining consumer ability to choose and bargain.

(5) Are the FIDCR program guidelines for a federally operated child day care program? It is possible that they were written in expectation that major child development legislation would follow, and they would become the program guidelines. However, the growth in day care has taken place under Title XX under a purchase of service model which has encouraged variety and diversity, not standardization

FIDCR are quite clearly the purchasing specifications which define the value which the federal government expects to get when it purchases child day care. The sanctions which back up FIDCR are the withholding or withdrawing of federal funds, unlike the sanctions in a licensing, protective, or rights enforcing legal action. Using its purchase power, the government spells out in FIDCR the quality needed to accomplish the goals of the legislation. Goals of Title XX in respect to day care are broad, and primarily adult-related. Interestingly, each of the five goals except the last has both a preventive and a treatment aspect, and it is the preventive goals which have particular relevance for day care:

Preventive aspect	Treatment aspect
(1) Maintaining economic self-support to prevent or eliminate dependency	(1) Achieving economic self-support to reduce or eliminate dependency
(2) Maintaining self-sufficiency, including prevention of dependency	(2) Achieving self-sufficiency including reduction of dependency
(3) Preventing neglect, abuse, or exploitation of children Preserving families	(3) Remedying neglect, abuse or exploitation of children Rehabilitating or reuniting families
(4) Preventing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care	(4) Reducing inappropriate institutional care by providing for community based care, home-based care, or other forms of less intensive care

(5)	(5) Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

The first preventive goal, maintaining economic self-support, could be as important as any factor in preserving families, the third goal, since the strain of poverty, underemployment and unemployment are determining factors in weakening family life.[3]

There is no goal for compensatory education in Title XX, as there was in Head Start. The standards appear to reflect a desire on the part of the Congress to establish and describe the kind of quality of care which children have a right to expect when federal policy assists their parents to find employment. If the potential of Title XX is realized in the next few years, and services begin to include broadly eligible groups of families with a sliding fee scale, the kind of standards which would be appropriate would be those which address themselves to the basic needs of childhood which all healthy children share. Additional standards can be added for various types of specialized needs which are in addition to, not instead of, the fundamental needs of all children.

The Scope of Potential Legal Challenges to FIDCR[4]

The scope of possible legal challenges to FIDCR changes over time as the statutes change. From the period between 1968 and 1972, FIDCR were a creation of the executive branch with very general guidance from the Congress. When a legislature confers power upon an administrative body with respect to the execution of a statute, it must prescribe a policy, standard, or rule for its guidance and must not vest it with an arbitrary and uncontrolled discretion. A statute which is deficient in this respect is invalid.[5]

Legislation which delegates rule-making, as the original 1967 Economic Opportunity Act did, could be attacked on the basis that it is an abdication of the law-making responsibilities imposed by the Constitution. But with the enormous rise in federal regulatory agencies, with their complex activities, this argument is no longer made. The basic constitutional issue is whether the powers are conferred in such a way as to safeguard against arbitrary action and unlimited discretion.[6]

There has been a steady trend in the courts toward upholding delegation of regulatory authority, and to require little or no detail in the standards for such action.[7] The Supreme Court has

said that the necessities of modern legislation dealing with complex economic and social issues have led to judicial approval of broad standards for administrative action; detailed standards are not now required.[8]

It is now a well-established legal principle that where the legislature has established a sufficiently definite policy, standard, or rule, it may authorize an administrative officer or body to adopt and enforce rules and regulations relating to the administration or enforcement of the law, to carry out the purpose of the legislature as expressed by it.[9] The Supreme Court has said that only if it could say that there is an absence of standards for the guidance of the administrator's action would it be justified in overriding Congress' choice of means for effecting its declared purpose.[10] But the standard which is to guide the discretion of administrative agencies need not in all instances be expressly stated in the statute. It is not always necessary to prescribe a specific rule of action to govern the exercise of powers conferred, particularly where a standard is implied in the statute.[11]

Could FIDCR have been successfully challenged before 1972 on the basis that the Congress did not sufficiently prescribe guidance to the Director and the Secretary? In the case of Project Head Start

and the employment-related day care programs in the Economic Opportunity Act, the Congress does in fact set out the kinds of standards necessary to make the delegation of authority for further rule-making valid. It should be noted that there are major differences between Project Head Start standards for the guidance of rule-making and the employment-related standards for the same purpose. The former requires its services to be "comprehensive," and to be directed toward aiding children to attain their full potential.[12] It is a compensatory program for disadvantaged children.

The day care section, beyond requiring health, education, and social services, only requires such other supportive services as "may be needed."[13] Needed for what purpose? The statute does not make its intention clear.

In order to be a "common set of program standards and regulations,"[14] FIDCR were therefore mandated by the Congress to include health, education, and social services, and to speak to the Head Start standards whose goals were more clearly stated in the statute. It is technically possible that a parent of a child in an employment related day care program could have sued on the basis that Congress did not intend his or her child to receive comprehensive services on the Head Start model, and that FIDCR had gone beyond its statutory limits. It is not surprising that such a suit was not brought.

Once it is established that the Congress did not improperly delegate its responsibility to the executive branch, there are other areas for potential challenge to FIDCR. In exercising its power, a public administrative body may adopt or make only such rules and regulations as are necessary and reasonable, and it may not act arbitrarily.[15] Two case illustrations highlight both the standard of review utilized by courts in reviewing administrative regulations and specific application of the standard. In Johnson's Professional Nursing Home v. Weinberger, the court said,

> The applicable standard for reviewing regulations governing state medicaid payments to skilled nursing homes alleged to be outside the authority of the Secretary of Health, Education and Welfare was whether the regulations were reasonably related to the purposes of the enabling legislation.[16]

In the case of Rasulis v. Weinberger, the court said,

> In light of the fact that the Medicare Act authorizes the Secretary of Health, Education and Welfare to make rules defining which institutions and persons are qualified to provide medical services to individuals entitled to insurance benefits under the program and to establish requirements necessary for health and safety of individuals furnished services in such institutions, the Secretary had the power to promulgate regulations establishing professional standards for physical therapists who wished to participate in the Medicare program.[17]

An administrative agency can be challenged legally if it develops rules and regulations without full public hearings, and without the opportunity for interested parties to be heard. This is particularly true when the rules have the effect of rate setting, as does the child-staff ratio in FIDCR. In 1963 an Ohio Court of Appeals ruled against the State Department of Public Welfare, in a case concerning the method used by the state agency in adopting rules and regulations for day care centers. The court held that the department had not complied with procedural requirements provided for in the state's administrative procedures act.[18] This has become a moot point where FIDCR are concerned at present, since FIDCR have been written into law, but, if future changes are made in them administratively, a failure to permit interested parties to be heard could be a potential basis for challenge.

A question has been raised as to the clear effect of FIDCR on costs and the rate setting effect which this has. It could be argued that the expense of the service curtails the number of children who can be served under the appropriation and therefore defeats the intention of the Congress. The effect of the legitimate exercise of power to establish program standards is necessarily connected with costs. While there are no cases directly on this point,

there are cases which state that the legislature may delegate to an administrative body the power to determine whether in particular areas there is a need for regulation of prices or rates.[19] Arguments attacking HEW for improper rate-setting for the children it funds are most unlikely to be sustained, since federal reimbursement is in theory available to cover the cost of meeting the standard. In practice, however, it is customary for states to fix reimbursement rates in an arbitrary way without regard for the cost of meeting required standards. While FIDCR do not appear to be open to challenge on this point, there could be legal action against the state, or possibly even against HEW for failing to establish an oversight of the state rate-setting process with the result that it is not possible to meet the standard at the established rate. These are somewhat remote arguments, since centers do not have to do business with the state, and their agreements on the rate to be paid are voluntarily entered into.

It is conceivable that a parent of a child in day care, who is not receiving any federal subsidy, could take action on the grounds that the effect of FIDCR on the fees paid by private parents in the same program results in unreasonable costs, depriving her or him of the right to life, liberty, and property, since the day care is necessary to enable employment, the means of livelihood. If a FIDCR regulation resulted in demonstrably unreasonable expense, it

is possible that a particular regulation could be overturned, since the regulations must still meet the reasonableness standard enunciated in Johnson's Professional Nursing Home v. Weinberger. A day care provider could make the same general argument.

There are procedural issues in rate-setting as well. Since rates affect many interests, special care needs to be taken to protect the rights of those affected. This means that effort must be made to hear from those affected, to publish proposed rates, to make information available, to hold hearings and establish appeal procedures.

The foregoing: improper delegation, failure to hear interested parties, going beyond Congressional intent, and the effect on rates, were the possible areas of legal challenge to FIDCR during the period 1968 - 1972 when they were administrative regulations. In 1972, the Congress amended the Social Security Amendments again to include specific reference to the existing administrative standards by year. [20] If there had been an opportunity to challenge FIDCR on the basis that Congress did not prescribe sufficient standards, the 1972 amendments closed that door. As described earlier, FIDCR became the floor below which future requirements could not go. Now the only legal challenges could be on specific interpretations and

applications of the standards, i.e., disagreement over the meaning of words rather than disagreement over the authority of the regulations.

The 1975 revision of the Social Security Amendments[21] set out earlier, completed the process of removing discretion from the executive branch (with a few exceptions, noted earlier). However, it is interesting to note that one of the provisions of the 1975 statute seems to return administrative discretion to HEW after the Secretary has reported to Congress on the appropriateness of the FIDCR.

> The Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives, after December 31, 1976, and prior to July 1, 1977, an evaluation of the appropriateness of the requirements imposed by subparagraph (a) together with any recommendations he may have for modification of those requirements. No earlier than ninety days after the submission of that report, the Secretary may, by regulation, make such modifications in the requirements imposed by subparagraph (a) as he determines are appropriate.[22]

But this return to administrative discretion would not necessarily open up the previous areas for legal challenge to FIDCR on the grounds of a lack of Congressional standards; now the entire legislative history of FIDCR, including hearings on S. 2425 is available to demonstrate Congressional intent and direction.

Finally, one of the key elements in the application of FIDCR -- one which substantially blunts an equal protection challenge -- is the nature of their application to the individual states: FIDCR only apply to federally funded child care services which are not mandatory, and federal funds come only upon an agreement executed between a state and HEW. The Supreme Court has stated:

> There is of course no question that the Federal Government, unless barred by some controlling Constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed...[23]

The law is also clear that the grant of federal assistance may be made upon conditions that are attached to the grant and that the acceptance by the recipient of the grant to which the conditions or stipulations are attached creates an obligation on the part of the recipient to perform the conditions.[24]

The scope of legal challenges to FIDCR is therefore very small, focusing only upon questions of the interpretation and application of individual requirements.

Challenges to Individual Requirements and their Enforcement

As compliance with FIDCR becomes enforced, those affected could challenge this action in the court if (1) a standard is found to be unconstitutional, or (2) if the actions of the enforcer appear to be unfair. The day care operators in five southern states have already brought the issue of adult-child ratios before a federal district court and won a delay in implementation.

Constitutional Issues in the Standards

The Federal Interagency Day Care Requirements, both those which were referred to in the statute and those few other rules which were delegated to the Secretary to determine, all now have the force of law except for the waivered staffing ratios. They are little laws. Laws, to be fair, must meet certain constitutional tests.

(1) The test of clarity. The man in the street should know what is expected of him. Social work jargon, child development jargon, or vague general wording, all of which might leave a reasonable man unclear, could be ruled unfair. If the standards themselves are vague, permitting a variety of interpretations; if widely different interpretations are in fact made; challenges might be based on these facts.

(2) The test of practicability. There must be a reasonable possibility that the rule can be met. An example of impracticability would be a requirement for regular psychiatric consultation in a geographic area where there are no psychiatrists available.

If there is wide and unstructured use of waivering, it could be argued that the standard itself is not practicable.

While there are no cases directly on this point, there is an instructive case concerning the federal school lunch program.[25] In it the plaintiffs claim they were denied equal protection of the laws

because their school had no facilities to participate in the school lunch program. In ruling against the plaintiffs, the court held that if a school is unwilling or unable to participate because of a lack of facilities, state officials are permitted to direct funds elsewhere, and are not required to hold up the lunch program in schools throughout the state.[26] This case is interesting also in relation to the concept of statewideness.

(3) The test of "greater goodness." The rule must not generate greater evil than the good it seeks to accomplish. If, as a side effect of accomplishing its goal, it produces some serious harm, the courts might decide not to support the rule.

An argument could made on behalf of the children not in day care that the high cost of the standards leaves them without any service, using up the appropriation, and forcing fees in the private sector which families cannot afford to pay.

The challenger would need a very strong case. Regulations issued by an agency in rule making must stand unless they are deemed irrational or arbitrary or capricious: it would be sufficient that the regulations be supported by evidence in the Commissioner's files or even by its experience.[27] FIDCR are even stronger because they are written in law. Challenges would have a very difficult time in any court.

In addition, one who claims that a regulation adopted by a government agency is invalid has the burden to make its invalidity so manifest that the court has no choice except to hold that the agency has exceeded its authority and employed means that are not appropriate to the end specified in the statute.[28] The difficulty a challenger would have is indicated in this language from a federal district court:

> that a regulation be harsh, unfair, inequitable, create hardships or inconvenience, or may be oppressive, severe or drastic and of doubtful propriety, does not demonstrate its invalidity.[29]

Rate-setting. As described earlier, it may be argued that a particular standard, such as a staff-child ratio which accounts for 80 percent of a day care budget in many cases, has an effect on cost to the non-subsidized family which needs child care in order to pursue life, liberty and property, and in order to meet their obligation of parental support to the child. If, at the same time, the standard could be argued to be unreasonable, it could be challenged.

Constitutional Issues in the Actions of the Enforcers

The Constitution requires that persons be given fair and equal treatment by their government. Possible grounds for suit against the enforcers of FIDCR might include: failure to enforce, selective or discriminatory application, arbitrary or capricious use of discretion; or going beyond the authority of the enforcer.

Failure to enforce. HEW, and the state agencies administering Title XX, do not have an option of looking the other way, or being lenient, or giving a lot of time, once charged by Congress to enforce FIDCR. The enforcing agency is liable and can be sued in case of harm arising from their failure to enforce. For example, in Kansas, the Health Department is being sued because a child was burned in a fire. The suit against the licensing agency charges failure to protect the child. A court in the State of Arizona recently held the state jointly liable for a $1 million judgment to a six year old boy who was abused while living in a foster home licensed by the state. The court ruled that the state, as well as the foster parents, must pay the damages because the state did not supervise the home adequately.[30] Illinois and California are being sued for $2-3 billion because victims of fraud allege that the insurance regulatory agency did not exercise its scrutiny sufficiently to protect the public.

Selective enforcement has been argued to be an injustice. Kenneth Culp Davis eloquently argues that selective enforcement is not equal justice.[31] The power to be lenient is the other side of the coin of the power to force unfairly. The principle that selective enforcement is injustice has not yet been upheld in a court. In fact, many statutes are written in such an unrealistic way that it

would be impossible to enforce them fully within the limits of reasonable manpower available to the regulatory agency. In such cases, Professor Davis argues that the regulating agency should establish its own rules governing its enforcement, rather than allowing each agent to make law by deciding individually whether and when to enforce.

Changes in this area will probably come slowly, through cases of failure to enforce. Because of its vulnerability if harm occurs, the regulatory agency is engaged in a Russian Roulette game in its selective enforcement.

Discrimination. It has long been established in law that if it can be shown that discretion on the part of those applying rules is based on considerations of race, creed, national origin, sex, or other such prejudice, the law is very firm. Yick Wo vs. Hopkins[6] cited earlier, was decided in 1886. Since then, we have Civil Rights and other legislation on which to base court action when a regulating agency applies a rule differently for one class of people than another.

Arbitrary or Capricious Use of Discretion. Some discretion is needed by the regulatory agency, but the trend is to avoid injustice by setting limits, or structuring, the way in which discretion may be used. If the regulator acts in an arbitrary or capricious way, without limits or structure to the use of discretion, suit can be brought on these grounds.

Finally, if the person responsible for applying the standards acts outside the limits of the standards, going beyond the scope of his or her authority, suit may be brought.

Special Enforcement Issues in Family Day Care

Applying standards to family day care raises legal issues which are more sensitive than those same issues in the case of centers.

In order to enforce FIDCR, someone must have the power to inspect, to investigate whether standards are being met. State licensing laws usually include wording giving the licensing authority the power to inspect. North Dakota's new licensing statute, for example, mentions the power to inspect in three different sections. It would be impossible to apply standards without investigative powers.

FIDCR does not have such legal language backing up inspection. Further, a question has been raised about whether these broad investigative powers are constitutional.[32]

In the case of Camara vs. Municipal Court,[33] the Supreme Court overturned a conviction of an individual who refused to permit a housing inspector to inspect his premises in the course of enforcing a Housing Code which included a "Right to Enter Building" section. The court said that "except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant."

The Supreme Court of California in Parrish vs. Civil Service Commission[34] held that early morning searches of the homes of welfare recipients are unconstitutional.

A factory owner in Texas refused entry to a federal OSHA inspector and was upheld in court. The case is pending in the Supreme Court.

Family day care is especially sensitive on these inspection issues because (1) the service takes place in a person's private home, with centuries of guarantees in the law and constitution for inviolability; and (2) it is usually a private arrangement among just two or three families, and very much under the direct control of the parent making the arrangement. One writer[35] argues that family day care and cooperative parent controlled center programs should be exempt from licensing on the principle that government intervention undermines parents' responsibility to the detriment of parent choices and values. Under the law parents are presumed capable unless[36] declared unfit in a hearing governed by due process, and licensing is said to be counter to that right.

FIDCR's requirement that family day care be licensed by the state has brought us face to face with the fact that the states have not succeeded in regulating family day care. Only about 10 percent of family day care is licensed.[37]

Traditional reasons for licensing a service (1) that it requires a degree of technical competence which the average user is not able to evaluate; and (2) that users are not in a position to have access to information on which to judge, need closer examination for family day care. Whether the first condition exists at all in family day care is questionable. But it is probable that the second condition at least partially exists, since in many geographic areas parents cannot count on the concern of a stable community to watchdog child care. For these reasons, several states, including Michigan, North Dakota, and Massachusetts, are testing out less traditional methods of licensing aimed at taking into account the informal nature of family day care, the need to cover all of it with the regulatory method, and the desirability of supporting parents' direct responsibility. One analyst found that traditional licensing methods are not appropriate for family day care.[38]

A suit has been brought against family day care licensing in California[39] by consumers of family day care, among them the National Organization for Women, whose Child Care Task Force believes that "licensing and regulatory procedures on the federal, state, and local levels must be revised so that they foster, rather than impede, the rapid growth of high quality child care and development programs." The suit charges that the state has failed to "enforce the above statute and regulations in such a way as to create more, not fewer,

family day care homes and in such a way as to avoid discriminating against any parents on account of their race; and to avoid depriving parents of their fundamental rights to raise their children as they see fit."

The right of licensing inspectors to inspect, particularly for family day care, may in the near future be severly limited, and search warrants required. Monitors of funding standards have even less basis for the right of inspection than do licensing workers.

Critique of FIDCR[40]

Standards operate as "little laws" and must meet constitutional tests for clarity, practicability, and greater goodness. "Appropriate" requirements will have to meet these tests. Further they must be feasible for use as funding standards, not so low that they fail to achieve the goals of the Congress, and not so high that they have an adverse effect on a needed service in the private sector and cannot feasibly be met. Finally, it must be decided "appropriate to what goal?" Standards appropriate for a remedial program are different from standards appropriate to a preventive program.

To summarize some of the comments which have been made about the FIDCR:
- the wording is often vague and unclear in a legal sense.
- the definitions of "administering" and "operating" agency do not entirely fit the range of possibilities which exist and leave a murky area of accountability between state and local welfare agencies.

- since 1968, the requirements have been widely waivered.

Of all the requirements in FIDCR, the staff-child ratio has been most widely discussed, since it is a key to day care costs, and many believe it is also a major key to day care quality. FIDCR wording leaves much room for interpretation when it says, for example, that for children between three and four "the total ratio of children to adults is normally not greater than 5 to 1." They do not speak to the conditions on which the ratio would depart from that figure. Further, they are silent on the topic of whether the number of staff means the total employed to cover a ten hour day, or only those in the classroom at a given time. Can cooks and bookkeepers count in the ratio? Do children attending part-time count as a whole child or a fraction? A uniform method for computing the ratio is not given. It does not make clear whether it is to be based on attendance, enrollment, average daily attendance, or other basis. The issue here is whether the operator is to be permitted to over-enroll so that attendance ratios will reflect FIDCR, or whether the enrolled ratio must be the standard, while programs lose money through under-utilization. In most states except North Carolina, the licensing agency will not permit enrollment beyond the ratio required for licensure.

It is difficult to make authoritative statements on ratios, because this variable is not independent from other variables in day care. Research data may shed some light on the difficult subject[41] but it is likely that the answer is "it depends." It depends on the quality of the staff, the needs of the particular children, the time of day and type of activity going on, the time of year and the weather, and on the design of the space. With all these variables, it may never be possible to justify one ratio over another on the basis of hard evidence of the effect on quality which would result.

It may be much easier to justify the ratio on the basis of fire safety. Ability to evacuate all the children in one exit trip would require a low number of children per adult, and particularly for infants and toddlers.

There has been confusion on the section in FIDCR called "Educational Services." Here the organization of FIDCR may have led to the confusion, since it divides day care into its "components" -- educational services, social services, health and nutritional services, as if it would be possible to add or substract the educational aspect from the service. Some Congressmen and administrators have been concerned over duplicating functions of the public schools and have tried to eliminate the educational "component" which is no longer mandatory under Title XX. Because of pedagogical connotations and organizational interests centering around the word

"education" it was common around the time when FIDCR were adopted to use the term "child development," or "learning" rather than "education."

However, it is very misleading to leave the impression that for young children there could be day care without education, or that education could be added on or taken away -- a "component." Most definitions of pedagogy would be inappropriate for the young child, and yet, using education in its broad sense, education will be there in the day care program, whether good education or bad education, because children are learning all the time. The younger the children, the more important it is for the staff who care for them all day -- not some extra "component" -- to contribute to their learning by interacting with them, assisting them to develop social interactions with others, and preparing a rich environment with which the children will interact.

Staff training and qualifications are therefore another key to quality in child day care. Legal issues around staff qualifications are at least as thorny as those around ratios, but because the wording of this section is weak, HEW has not encountered the storm of protest which has centered on ratios. Some of the difficulties in any serious certification of staff are (1) In the field of child care, we are all instant experts, prepared to defend our expertise

with some emotion because it represents a personal commitment;

(2) Any method of credentialing, either academic or extra-academic involves some expense and therefore becomes more accessible to those who can pay for it;

(3) For poor children who may be members of minority groups the staff certification requirements could reduce the possibility that the children would be cared for by members of their own communities. The idea that only outsiders are competent would have a damaging effect on children's self esteem.

(4) Attempts to formalize qualifications for staff in day care will endanger the parenting role; as Grubb and Marks put it:[42] "not in the sense that parenting becomes viewed as more important but in the sense that it will become the province of specialists and experts."

On the last point, the day care field has been concerned. As day care has begun to see itself as an important family support system rather than a narrow, child-focused service, it is finding new ways to help parents in their responsibilities to maintain family strength, and this entails a new view of the professional-parent relationship. As the Bank Street Consultation Service describes the issues,[43] "The professionalization and specialization of various aspects of child rearing have fragmenting effects on the

efforts of families to rear their children in continuous, cohesive ways. This fragmentation ultimately devalues the role of the parent. When helping services are narrowly conceived and provided to individual family members by random specialists, they weaken, rather than strengthen, family and community ties, isolate individuals, and make them more vulnerable to the control of institutions and government. When helping services are of this character, client (non-professional) and helper (professional) are divided and insensitive to one another. Whatever differences there may be between them in class, race, or sex are exacerbated, which tends to perpetuate injustice and inequality."

There is no doubt of a serious need for training caregivers, not only to develop skills in working with children in groups, but also to develop supportive, sharing, and uncondescending attitudes toward parents -- the only true "professionalism." The issues surrounding credentialing, however, remain unresolved. It is too soon to say whether the Child Development Associate assessment will succeed in its goal of resolving these issues.

FIDCR's Role in Relation to State Licensing

There is no problem in logic in having two major kinds of standards. State licensing standards are developed in response

to state legislative mandates to offer preventive protection to all children, regardless of whether any funds are spent. They govern the licensing agency in granting or not granting a license, or permission to operate. Licensing outlaws sub-standard day care services. FIDCR, on the other hand, are mandated by the Congress, and govern only programs in which Title XX funds are spent.

There is no logical difficulty in having two sets of standards, and no logical reason why they should be the same. The federal government has a perfect right to set a higher standard for the care of those children subsidized with federal funds; in fact, one might argue that the standard set should of necessity be higher than the level at which a state permits a service to operate legally.

There is, however, a problem in practice if not in logic. Everywhere in the country there is vast confusion over the two. Constant comparisons are made on the assumption that they should be the same. The growing confusion in the public confuses the Congress and seriously undermines the success of either regulatory program. Conceptually, there is no reason why we should not have both FIDCR and state licensing requirements. Practically, there may be reasons for changing to a system which the public can better understand and support.

Either way, leadership from HEW in concert with the different advocate groups is essential for achieving clarity and public support. Conflict has been destructive. A number of states report that

efforts are being made to weaken licensing laws as fallout from the FIDCR conflict.

FIDCR will not supersede state licensing if federal standards are less stringent.

If a decision is made to support a system which has just one level of standards, (not counting safety and health codes which derive from still other statutory mandates) will we raise licensing or lower funding standards? The options appear to be to (1) rely on state licensing, accepting any code the states adopt through their democratic processes, offering leadership and guidance material but no control; (2) offer the states incentive funds if they will adopt as their licensing requirements a federally recommended set of standards; or (3) impose a federal set of requirements on the states which they must adopt as their licensing codes as a condition of receiving federal funds for some of the children in day care. The third option is probably unconstitutional; it is certainly politically impractical. As long as so small a proportion of children are federally subsidized, it is not likely that the federal government could successfully impose its requirements on children receiving no federal funds. If it did a legal challenge would be certain, and it is probable that efforts would be made to wipe out state licensing laws through state legislatures.

The second option, while less drastic, does not seem practical, unless states fund day care on a universally available, sliding fee scale model. If it is of overriding importance to have just one set of standards, at present the likelihood is that would mean setting the standard at the level of state licensing, the first option.

State of the Art in Day Care Licensing

Day care licensing was caught unaware by the major shifts in the use of child care, and the major social changes of the sixties. Licensing staffs did not anticipate the political problems arising from protest over aspects of FIDCR.

However, supports have reached day care licensing in the past few years. A major federal study produced guidance material[44] and small grants to states to engage in activities related to the guides. A great variety of changes have resulted, which are now being shared back and forth among the states with still greater ripple effects.

Attorney Generals have begun to pay attention and provide back up to enforcement.

Since 1971, 11 states have passed new licensing acts, while four others are considering new bills, 24 states have passed one or more amendments to their licensing statutes, many of them just taking effect in 1975.[45] Forty of the fifty states are in some stage of review of their regulations, a process involving many citizens and taking between one and two years. Some of the changes include, in priority order:

1. More clear concise, measurable standards.
2. More detailed, specific or restrictive standards.
3. Special regulations for infant care.
4. Program staff requirements and training.
5. Health requirements for children.
6. Program requirements.
7. Special regulations: evening care, school-age care.

Between 1971 and 1975, 39 states reorganized and/or made significant changes in their administrative structure for day care licensing. Eleven created separate governmental agencies focusing on child development or made changes in this direction. Fifteen states created separate licensing units or made changes to bring together the various regulatory activities into a functional grouping.

The effect of all these changes will be felt over the next five year period. Therefore comparison of FIDCR with licensing requirements,[46] while interesting, is not entirely valid since much of the data is rapidly going out of date. In general, except in a few states, there is a growing consonance, and some forty states are close to the recommendations of the "Guides." Many are improving on the language and writing more precise requirements.

The following are some data comparing state licensing requirements as of June 1974. These data are to be read with the understanding that many states have written new requirements since that time, and others are engaged in a one to two year process, which will result in changed regulations.

All states now license day care centers. Two states do not license homes. One state licenses homes, but not on a statewide basis. Twelve states license homes only when there are more than 3, 4, or 5 children.

The greatest variation between different states is in the required child-staff ratio. There is no magic number on which states agree.

For children under two, ratios vary from 2-1 to 10-1. Most are 4-1 to 6-1. Many states (13) have no regulations, essentially outlawing infant care except by permission.

For two year olds, ratios vary between 4-1 and 14-1. A plurality (11) use 10-1

10 states require	8-1
7 states require	5-1

The remaining 22 states had no requirements, indicating conservatism beyond the 5-1.

For three year olds, ratios varied between 5-1 and 15-1. A majority (29) use 10-1.

For four year olds, ratios vary between 7-1 and 20-1. The pattern is very varied.

15 states require	10-1
10 states require	15-1
8 states require	12-1
5 states require	20-1

For five year olds, the ratios range between 7-1 and 15-1. Again the pattern is very varied.

For school age children, ratios vary between 10-1 and 30-1.

As in the case of FIDCR, states generally do not spell out the computation method to be used in establishing the ratio. If the center is open for ten hours, does the center cover these hours with more than one staff person in the ratio? Some states make it clear that only classroom staff can be counted, others do not. The differing ratios at different times of day are not usually addressed. North Carolina, in its school age ratio, permits over-enrollment up to 20 percent; most states do not permit any over-enrollment to compensate for absenteeism. Licensing standards do not usually state whether they are based on enrollment, attendance, or some other basis.

Another issue on which there is variation in state licensing is the question of whether teenagers can be used, and the number of adults on the premises.

23 states require 2 adults.

2 states allow the second person to be a teenager

4 states require 2 adults only when there are more than 10 children.

Required staff qualifications in family day care homes usually stress human qualities. A smattering mention the desirability of further training. For centers, the required staff qualifications vary

from high school through college, with an emphasis on child development when college is required. Some states have further requirements for Directors. The age is usually 21 when specified.

Twenty-seven states require that the person responsible for supervision of educational activities have either some formal training in child development or some experience or both. Training requirements range from the academic degree to one course. One state required an educational consultant if the center director is not qualified in early childhood education or child development.

Thirty-two states prescribe and one recommends that child care staff have formal child development training or experience or both. Of the 32, two require that at least one staff member have the formal training.

Thirty-three states either prescribe, recommend or imply that the facility be equipped with educational materials; three others require adequate or suitable materials to carry out the program; three having no program requirement do prescribe educational equipment, while eight other states having educational program and supervision requirements do not specify that the center be equipped with educational materials. Consonance with the spirit of FIDCR may be inferred from the descriptions of the required educational programs in 33 states added to the supervisor qualifications and duties in six additional states and from educational material requirements in five other states, totalling 44 states.

Twenty-two states make specific references to care of the school age child.

State licensing requirements have not required social service professionals on the staff of the day care center in most states. Three states require and two recommend employment of trained social workers or purchase of such service by the day care program; six impose this requirement if the day care center is responsible for providing social services; one requires referral capability; and one requires that such services be available from a community resource.

Twenty-five states require both initial and annual health examinations. These range from a physician's statement of good health to a complete clinical assessment. Nineteen states require initial examination only. In 17 states, these health assessments must include or be supplemented by TB examinations. Only two states require dental examinations. Thirty-seven states require daily evaluations for symptoms of illness. Of those states not specifying daily evaluations, two require and one recommends illness screening training for staff, and two other states' regulations strongly imply that such evaluations be performed.

Most states place the burden of immunization on the parent. Specified immunizations include:

Rubeola and/or Rubella -	31 states
Whooping Cough	31 states
Smallpox	19 states
Polio	31 states
Tetanus	32 states
Diptheria	33 states
Mumps	3 states

For space, there is a magic number on which the states are in general agreement -- 35 square feet indoors and 75 square feet outdoors per child. For the outdoor space, it is usually limited to the children using the space at a given time. 39 states require 35 square feet, six require 30 square feet, four require 25 square feet, and one requires 20 square feet. The space is generally exclusive of kitchens, toilets, offices, hallways, storage areas, and other space not in use by the children. 42 states require and two recommend outdoor space ranging from 40 to 100 square feet. Seven other states have not defined outdoor play space other than that it be sufficient and safe.

Most of the above data are for centers, where there is some comparability between state licensing and FIDCR. Family day care is different in nature, and state requirements generally are less formal, stressing the character of the home rather than regarding it as a mini-center. FIDCR however does not differentiate between a center and a home; nor did the Guides for Day Care Licensing.

It should be re-emphasized that the above data, even as recent as 1974 are not current data. At any given moment in the fifty states it is likely that ten states will be in the process of changing regulations; and another ten will begin to do that before any survey can be published. To the scholar and policy maker, the caveat should be, "If it's in print, it's out of date."

It appears that the standards are gradually rising, and that the states are going in the direction of greater uniformity, although great regional differences still exist. What of their enforcement capability?

Theories of regulation postulate a cycle in the process consisting of four phases: gestation, youth, maturity, and old age of the regulatory agency. During the period of gestation, public pressure builds for short-term action in its response to a specific problem. A regulatory agency is created which in its youth exhibits an aggressive, crusading spirit. However, the regulated groups remind the agency of their concerted strength, while without the irritant of the specific problem, public support becomes less militant. The third phase, maturity is marked by adaptation of the agency to the constraints upon it, and agency devitalization. The final phase -- old age -- finds passivity giving way to apathy, and the regulated "capturing" the agency. Abandoned by the public, the agency makes safe decisions, while it is an easy target for budget cuts by the legislature.[47]

This theory was developed primarily from study of bureaucracy which regulates prices and profits in private industry and public utilities by government commission. It is not totally applicable to human services regulation where quality is a desired end. However, there is enough validity to the cycle to point to the need for building a capacity for self-renewal into the system. Looking at

the electric charge which resulted from the small amount of money offered the states by the Office of Child Development in 1972, along with guidance material, it seems safe to say that such self-renewal is not only possible, but likely, given national leadership.

It is not possible to compile all the figures on the staff available in state licensing offices to inspect for quality, since not all licensing staffs are centralized. Some licensing is done by counties or local governments, and some staff at the central or decentralized level perform duties other than licensing. The trend is toward centralization at the state level, since the experience has been that monitoring and control of quality works best as a central operation, while service functions work well when decentralized. Figures exist on licensing staff,[48] but there are too many apples and oranges among them to add up. Thirty states reported a total of 676.2 full-time day care licensing staff; the other twenty have comparable staff but organized differently and unable to translate into full time equivalent numbers. The staff engaged in this activity is on the order of magnitude of 1,000 workers.

In general, it is the subjective impression of the author that licensees tend to support the idea of licensing, especially by central staff, and to view the staff positively. One recent study found reasonably good congruence between the views of licensees toward licensing with the views of licensors.[49] The responsible child care operator with a real concern for children does not want to be undercut by unscrupulous cost competition from operators willing to cut corners. State regulation brings referrals, legal status, and other benefits.

There are some problems in licensing, which, where they exist, arouse opposition.

Operators object to (1) Inexperienced licensing staff; (2) frequent turnover in licensing staff; (3) confusion by consultation not connected with licensing; (4) treatment of family day care either as "little centers" by those accustomed to day care center licensing, or as placement by those unfamiliar with the rights of licensees; (5) inappropriate building safety codes or inadequate and unresponsive inspection in the building safety field, which the licensing office has no statutory authority to correct. These problems do not exist everywhere.

Finally, those centers which serve federally-funded children feel severely over-regulated. One state reported some fifteen separate quality control processes, when they added up licensing and other regulation, proposal processes, eligibility determination processes, fiscal auditing, and community process applied to them. They are emphatic in not wanting to add another federal monitor to the crowd.

SECTION II. ISSUES AND OPTIONS FOR THE FEDERAL GOVERNMENT

Strategy

FIDCR are a strategy for achieving a level of quality for children in federally funded day care across the nation. While it seems clear that the strategy has resulted in a higher level of quality than would have been the case without FIDCR, it is also clear that there has been massive slippage in implementation. There is also confusion and controversy surrounding the strategy which has spilled over to affect the success of state day care licensing.

Any strategy, and particularly standards, needs re-examination from time to time. A successful strategy for the next five year period will be arrived at only through balancing three different kinds of factor: (1) the resources available to the federal government for implementation of the strategy; (2) the variety of external factors either undermining or enhancing the strategy; and (3) the values and goals of the various parties to the strategizing. Policy-making combines what you want to do, what you can do, with what the world will permit you to do.

Effective implementation of FIDCR depends on an effective inspection process and the absence of external factors working against effectiveness. At present HEW does not have federal staff to monitor and evaluate FIDCR through federal inspection. A key question, on the resource side of the triangle, is simply, who will inspect the programs? HEW must either seek additional resources, or make better use of the resources available. Head Start Community Representatives could not add on such a massive workload. The options appear to be (1) employ at least 100 new federal inspectors; (2) make and enforce more requirements on state purchase of service and program development units; or (3) make use of state licensing staffs for this additional kind of inspection and quality control.

None of these options is the perfect solution. Most day care operators feel there are already too many inspectors; they would prefer more contact with fewer bureaucrats. Adding federal monitors to the existing state licensing and purchase of service staffs does not

appear to be a good use of resources. Much more promising would be to use the state systems for certifying that programs meet funding standards. However, few states have much staff commitment to this effort, or a well developed system in place. There are exceptions, such as North Carolina, which has both a certifying and a licensing system, with dual inspectors. North Carolina's system has much to commend it; it is well thought out, conceptually clear, and goal-oriented. Such efforts should be supported.

The third option, in the opinion of the author, would work better in most states, because it reduces the overall number of inspectors, and permits one person to spend more time in supervising a day care operation. Furthermore, if carefully done, it could enhance both licensing and the fiscal monitoring, rather than continuing two weak systems. Even in North Carolina, the problem of overlap and rivalry between licensing and fiscal monitoring has not been solved, and there is a possibility that the two strategies for quality may in the future undermine each other.

The third, if well done, could have the greatest potential for children. At present FIDCR is weak because of a lack of resources, and state licensing is also somewhat weak due to eroded public support, lack of training, and not quite enough staff. If the implementation of FIDCR could synergistically combine with the implementation of state licensing, rather than overlapping with it, the result could be more effective use of scarce resources.

Another issue in standard-enforcement is the resources available to the day care services for meeting the standards. In theory, purchasing specifications could be set at any level deemed desirable, since funds accompany the standards. In practice, however, the states' method of fixing their rate for reimbursement has been arbitrary, not based on the costs of meeting standards, and has not been guided in any way by the federal government which set the standards. Any serious interest in implementing federal standards must extend to the process of reimbursement. Government cannot successfully impose standards if it pays programs so little that they cannot possibly meet the standards.

One area for potential improved implementation would be to develop federal guidelines for rate-setting, based on historical costs in money of meeting the standards. States could be required to spell out a rational and uniform method of arriving at a rate in their Title XX plans. Appeal processes could be established.

There is no question that the fierce debate over ratios has masked the real issue which is too low payment for day care. Louisiana pays 33¢ an hour. Infant ratios cannot be met at that rate. One state has developed a fair method for computing a rate for center care, at least, but pays centers at a rate less than the computed costs of meeting standards.[49]

One real problem with establishing a fair maximum allowable rate based on documented costs is the fact that day care services will then use the maximum as a minimum when developing future budgets. The best

solution would be the deliberate encouragement, or perhaps even requirement, that centers include private, fee-paying families not eligible for subsidy.[50] Including them would create a vested interest at the program level in controlling costs which does not now exist in many subsidized programs.

Some of the external factors which have tended to diminish effective enforcement of FIDCR are the following:

--confusion over FIDCR and state licensing, with many centers and most homes unaware that they existed

--the temper of the times -- anti-bureaucracy anti-big government, and anti-regulation

--revolt against excessive paper work

--lack of the hard data knowledge base on which to justify standards

--the nature of the legal process, upholding rights of property for operators with emphasis on due process, and little emphasis on children's rights to emergency intervention

--the use of political influence on the part of the regulated, reinforcing bureaucratic passivity and apathy

--shift toward more middle-class families using day care

--the current desire for cost cutting does not create a climate conducive to effective inspection

--scarcity of operators, in some states, able and willing to meet requirements. Day care is still a sellers' market.

--fragmentation of agency responsibility

There are two aspects to the final factor on the above list. First, at the program level, the service is paid by one agency, licensed and inspected by another, and assigned children by still another. There are other statutory mandates to inspect and approve, and unresponsiveness in those other bureaucracies can impede effective and helpful regulation. Zoning ordinances are mis-used in many communities to impede service. Rate setting is seldom tied to the inspection process as an incentive to quality. There is no systematic and central collection of evaluative materials.

The second aspect has been divided responsibility at the federal level, requiring dovetailed action by the Office of Child Development, which had the standards responsibility, with Social and Rehabilitative Service which had the money. No concerted serious effort was made to enforce FIDCR prior to the Title XX legislation.

It is interesting to note that under the reorganization of HEW, the major day care funds remain in Payment Services Administration, while standards, and Title IV-B Day Care, go into Administration for Families with Children and Youth. Both, however, report to the Office of Human Development, where some administrative energy could assure future dovetailing. The reorganization itself has not solved the problem.

The above external constraints will need to be analyzed and addressed in determining next steps in FIDCR strategy.

The third consideration in policy-making is the values and goals of the policy-makers. Hence it appears that a failure

to examine underlying assumptions and to develop a clear consensus on the future goals of day care among the advocate groups, the different agencies of HEW, and the Congress is inhibiting effective standard implementation. More discussion is needed, and more trust and good will, before the needed consensus can be developed and day care policy can move forward.[51]

Total agreement will not be reached among the diverse groups representing different professions and agency interests of

education, health, welfare, labor, employers, publicly funded providers, private providers without subsidy, parents, community development agencies, cities and states, women's groups, and minority interests. Yet coherent national policy for children cannot be created until these groups agree to identify their common ground.

Consensus building requires dialogue. It is not the same thing as that impossible dream, a unanimous vote. Nor is it majority rule. Democracy is not the imposition of the will of one group upon another. As groups are not listening to one another or to parents but trying to "win out" for one philosophy or professional interest over others, the results will be power struggles and their clinical symptoms: paranoia, lack of commitment, and a climate of conflict.

The difficult task which will determine the success or failure of any strategy to achieve quality child care is that of finding agreement on some over-arching goals for children and their families so that government, with the consent of the governed, can act effectively and with support.

Options for the Federal Government

Among the spectrum of possible courses of action by the federal government, four strategies might be identified and examined:

1. Deregulate day care at the federal level, leaving all regulation to the states and local communities.
2. Accept the status quo as the best which can be achieved under the circumstances. Continue FIDCR, rewritten, but use mild sanctions at the state level to achieve compliance over a long time period without massive federal or state commitment to resources for inspection. Rely on state funding approval staff.
3. Commit more federal resources to making FIDCR work. Rewrite thoroughly into strong, enforceable language, and employ new federal monitors, or fund new state positions.
4. Use the need for FIDCR enforcement as a lever to make the entire regulatory system work better, through contracting with state licensing offices. Require effective staffing, offer training and leadership and incentive funds to bring about a shift toward a consumer-oriented regulatory system.

The first option does not appear to be a viable one. Economic pressures tend to undermine quality in a situation in which children are powerless to control what happens to them. It is an established principle that government intervention is needed when individuals cannot protect themselves. Market strategies will not achieve quality in the field of child care. HEW has

an interest in seeing that public funds are spent on effective programs.

The second option is to perpetuate a process known to be effective, with risk of suit.

The third option in its federal version, is likely to be very expensive. While it could achieve quality in federally funded programs, it may have harmful side effects in non-funded programs, would be unwelcome by all operators, and would weaken, rather than improve the regulatory system as a whole by its side effects upon state licensing. Funding new state positions might be preferable but would be more difficult to control.

The fourth option is worth consideration because it is possible that with a reasonable use of federal resources, improvements could be made in the entire regulatory system which would benefit the quality of care received by all children.

The following recommendations are therefore based on analysis of the implementation of the fourth option, although some of them could relate to the other options.

Recommendations

It is always easier to identify problems than to propose solutions. There is only one recommendation which this paper can make with certainty; and that is that it is extremely important for the child advocates and providers of day care of different types to listen to one another when they differ, and to work consciously toward the goal of consensus, rather than

trying to win out over each other. The only standards which can be implemented will be those with a solid base of public support. Disagreement in the field will forever prevent that base from existing.

This section will suggest some recommendations, most of them very tentative, on the following questions: Should there be federal funding standards in additon to state licensing standards? What should the standards be? Who will monitor and inspect? What is an appropriate and useful federal role in the decade to come?

1. It is strongly and untentatively recommended that the federal government should not attempt to dictate what state licensing standards should be until fair public subsidy is available for all children who need it. The federal government should restrict its action to those children who receive funds. It would be useful to try to regain lost ground and reestablish a federal interest in the quality of child care whenever federal funds are spent on child care, to include the Labor Department.

2. Tentatively, it is recommended that there should be established in each state, as part of Title XX planning, a process for deciding what the funding standards should be in that state. All interests should be represented, and the goal should be consensus-building to create a strong base of public support for the standards to be adopted in the state's Title XX plan.

FIDCR, in a re-worded version, such as the one developed by UNCO and tested in Region V, should be used as guidance material by the citizens in these discussions.

States might choose, for clarity of administration, to use their licensing standards for the purpose of funding standards, particularly in those states which have had high standards which could not be enforced, or in states which have recently upgraded their licensing standards. Or if their licensing standards are low, they might want to keep them low, with a higher level of standard for public funding. To a degree, this might continue the present confusion, but it could prove to be a workable arrangement if the citizens, both consumers and providers, had made the decision themselves after considerable discussion.

Bringing together different interests to reach consensus on standards should be repeated every four or five years. Standards should not be written into law but should be seen as part of an ongoing dynamic process for achieving an agreed-on level of quality for children.

It is essential that there be thorough orientation of all participants into regulatory concepts, the process of reaching consensus, and the importance of consensus in undergirding the implementation of standards.

3. Should FIDCR be rewritten? The version being used by UNCO is much clearer than the original document. In

many places, there is need for additional specific language spelling out how one would measure whether the standard is being met. A method of computing staff-child ratios needs to be added, and the question of what the ratio should be might be reconsidered in the light of the tighter computation.

Certain wording which would tend to dictate to parents what program form to choose should be deleted.

4. Are FIDCR to be compensatory standards, or will they represent minimums for the care of normal healthy children whose parents need child care in order to work? It is tentatively recommended that the FIDCR rewritten goal standards should spell out two kinds of staffing ratios. One would be the core ratio necessary to meet the needs which all children share, and the other would be a compensatory ratio. The compensatory ratio would be recommended for programs serving children who are disadvantaged or have special needs for remediation of any kind, as well as programs employing a number of untrained staff and upgrading their skills through in-service supervision and training.

It should be clear that if a state standard-writing group were to recommend the use of a compensatory ratio in some programs, then the state would have to have a rate-setting process which could respond by a higher rate of reimbursement for those programs. The basic, core ratio recommended for consideration by the state groups could be the one described in "Guides," while one could be the one in the present FIDCR, with tighter computation.

5. The next issue is a difficult one: should there be a federal "safety net" set of standards below which the citizens groups would not be permitted to go in establishing their state's standards for public funds? There are compelling reasons against it. A federal "floor" would probably function as a "ceiling" at the state level, preventing the states from arguing standards on their merit.

However, it is difficult to accept the idea of federal money being spent, for example, on a 10-1 ratio for infants, which some states now have in their licensing. It is recommended that there be some kind of limit to what the federal government would accept in staffing - again a very tentative recommendation.

6. It needs to be clear that funding standards are indeed to be funded. Otherwise the recommended citizen process would be meaningless. Therefore HEW should require the states to develop a method of reimbursement based on the documented cash costs of meeting standards. It is vital that the reimbursement rate be adequate, in an accounting sense, to cover the out-of-pocket costs of the quality care which the government wishes to specify. Unless the principle is accepted in child care, standards will never be met.

7. Further, HEW should require states to link their rate-setting and reimbursement processes with the inspection and quality control processes. The operator should know at once that failure to comply with standards will trigger the

rate and reimbursement processes immediately. It is also possible to experiment with some incentive mechanism in the rate setting process for new standard compliance.

8. The federal government might best use the existing state licensing staffs for monitoring FIDCR, and should contract with the states for this work. Not all licensing offices should be used, but certain criteria should spell out the characteristics of a licensing office able to take on this additional function. For example, only a state-level centralized operation could effectively enforce uniform quality. It is probable that the licensing staff should be administratively separate from child placing and purchase of service staffs. There would have to be a staffing level to enable the state to visit the programs more than once a year. Four times is desirable; twice would be essential. Staff should also be qualified through established state requirements so that they can be expected to have expertise in both child care programming and administration, as well as in regulatory concepts.

The benefits of the federal contract should be made strong enough that states would have an incentive to meet those requirements. In states that do not, the federal government should develop an alternative, but temporary method of monitoring, perhaps by contract with a state day care association, SACUS, AEYC, DCCDCA, Child Welfare League or some local college.

At present licensing appears to be rather weak in contrast to what it could be, and the federal government does not have

the capability to monitor program quality. Rather than trying to use federal and state tax dollars to continue to monitor separately, the federal need for staff to monitor could be used to strengthen the licensing system, give it a new orientation toward consumers, and a better image.

9. The important role of the federal government in the next decade could be carried out through assuming leadership responsibility for the ongoing training of state licensing and monitoring staffs. 100% federal funds should be available for such training when states contract to monitor funding standards. Through its training role, the federal government could begin to transform licensing away from its present provider emphasis into a more vigorous child advocacy system, which emphasizes licensing as a consumer protection program guaranteeing the rights of children and their families.

Traditional practices which have undercut sound enforcement could be changed through training. Graduate level course work in day care regulatory concepts could be encouraged, not only for these monitoring staff people, but for decision and policy makers who are weak in this area. This kind of leadership role is very appropriate from the federal level, and could help the country achieve quality in its child care programs.

10. Through public education, the federal government could stimulate greater use of the regulatory process by the public to secure their rights, much as civil rights legislation has been used. Materials calling attention to complaint procedures could be developed in cooperation with states, and federal

technical assistance offered to consumer groups.

11. There should be an individual identified in HEW as responsible for technical assistance to the citizen groups in all the states in the development of standards. This person would assist the regional offices in stimulating training, conferences, and work with academic institutions.

12. The federal government should offer its technical assistance to the states in methods of reducing the fragmentation among licensing, health, and safety inspections.

13. In addition to opening up the standard-setting process to all interests, the federal government might also experiment with opening up the monitoring process to include visits by volunteer consumer groups. Mechanism for regular consumer input to the federal level should be created.

14. The regulatory processes should "go public" to discourage passivity on the part of the regulatory agencies. Copies of inspection reports should be disseminated to the press and interested groups. Programs should be required to display the most recent report. All regulatory decisions should be publicly disclosed.

15. HEW should disseminate information and encourage conferences designed to encourage consensus building in the direction of coherent national policy for child care in the future.

A little more attention by the federal government to work with state licensing offices could transform them into a positive and vital regulatory program across the country, achieving at the same time a monitoring of the FIDCR.

It is "appropriate," to use the Congress's word, that whatever method is selected for monitoring funding standards, its relationship to state licensing be considered. In America, children in day care will include subsidized children and children whose parents pay fees without subsidy. Unlike European day care, this country is expressing in policy a continuing commitment to the private sector. Since licensing will affect all private programs, while funding monitoring will apply to those children receiving subsidy, these processes must dovetail. It should not be too much to hope that they might strengthen and enhance one another, together creating a national child daycare regulatory program with vitality and credibility, trusted and used by parents as a consumer protection program.

FOOTNOTES

1 Ernst Freund, "Licensing," in Encyclopedia of the Social Sciences, 1935, Vol. IX, pp. 447-451.

2 See Marvin Sussmann, "Changing Families in a Changing Society," White House Conference on Children, Washington, D.C. 1970.

3 Keniston, K. Family Income Support, NCOCY, 1976, argues that the most important support to poor children would be to provide their families with decent jobs with adequate pay to provide for their children an environment of self-respect.

See also Piven and Cloward, in Beardsley, P. Whose Country America? California, Dickenson, 1973, pp. 263-265, who argue that day care is not welfare reform, but labor exploitation under present policy of encouraging work only at low wages.

4 Most of this section was written by Barry Mintzer.

5 Okl. v. U.S., 139 F2d 248, certiorari denied.
321 U.S. 795, 64 S. Ct. 846.

6 For the non-lawyer, it is important to know that the growing concern in the legal profession about discretion has a long history. In the case of Yick Wo vs. Hopkins, May 10, 1886, an earlier case is cited involving permission to operate a steam engine. If, for steam engine, the reader will substitute the words "day care center," it is possible to get an understanding of the major issues involved.

"In the case of City of Baltimore v. Radecke 49 Md. 217...the defendant had erected and used a steam engine, in the prosecution of his business as a carpenter and box maker in the city of Baltimore, under a permit from the Mayor and City Council which contained a condition that the engine was 'to be removed after 6 months' notice to that effect from the Mayor.' After such notice and refusal to conform to it, a suit was instituted. The Court found that the ordinance "does not profess to prescribe regulations for their construction, location, or use; nor to require such precautions and safeguards to be provided by those who own and use them as are best calculated to render them less dangerous to life and property; nor does it restrain their use in box factories and other similar establishments within certain defined limits; nor in any other way attempt to promote their safety and security without destroying their usefulness. But it commits to the unrestrained will of a single public officer the power to notify every person who now employs a steam engine in the prosecution of any business in the city of Baltimore to cease to do so, and by providing compulsory fines for every day's disobedience of such notice and order of removal, renders his power over the use of steam in that city practically absolute, so that he may prohibit its use altogether. But if he should not choose

to do this, but only to act in particular cases, there is nothing in the ordinance to guide or control his action. It lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented. It is clear that giving and enforcing these notices may, and quite likely will, bring ruin to the business of those against whom they are directed, while others from whom they are withheld may be actually benefitted by what is done to their neighbors; and, when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes necessary to suggest or comment upon the injustice capable of being wrought under cover of such a power..."

In the case of Yick Wo, a Chinese laundry operator against whom regulation had been used in a discriminatory way, the Supreme Court had this to say:

"Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.

See State v. Gilroy, in which the child care and placement licensing law was held unconstitutional, 3 Wash. 2d 41, 221 P 2d 549 (1950.).

See also Packer Collegiate Institute v. University of State of New York, when a law licensing private nursery schools was overturned because the commissioner was left without check or guidance, the particular issues being required financial statements and parent education. Here the additional point that arbitrary action by public officials denied parents their constitutional right to send their children to private schools was made.

7

8 Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 70 S. Ct. 403.

9 Kramer v. U.S., 147 F. 2d 756, certiorari denied 65 S. Ct. 1026.

10 Yakus v. U.S. 321 U.S. 414, 64 S. Ct. 660.

11 Re Petersen, 51 Cal. 2d 177, 331 P 2d 24.

12 42 USCS 2809 (a) (1)(1967).

13 42 USCS 2932 (a) (1967).

14 42 USCS 2932 (d) (1967).

15

16 Johnson's Professional Nursing Home v. Weinberger, 490 F. 2d 841.

17 Rasulis v. Weinberger, 502 F. 2d 10006.

18 Skating Vanities Co. v. Shale, 119 N.Y.S. 2d 184, 203 Misc. 729.

19 Johnson's Professional Nursing Home v. Weinberger, supra.

20 42 USCS 2932 (d) 1972).

21 42 USCS 1937 (a) (9) (A) (1967).

22 Briggs v. Kerrigan, supra. But see Justice v. Board of Education, 351 F. Supp. where a lower court questions the reasoning of Briggs.

23 State of Oklahoma v. U.S. Civil Service Commission, 330 U.S. 127, 143 67, S. Ct. 544, 553.

24 U.S. v. Frazer, 317 F. Supp. 1079.

25 Briggs v. Kerrigan, 431 F. 2d 967. But see Justice v. Board of Education, 351 F. Supp. where a lower court questions the reasoning of Briggs.

26 This case also relates to the issue of "statewideness" where some fear a problem of unequal treatment if the state cannot meet the total need for day care at a single stroke of the clock and therefore defining need very narrowly, while others hold that all that would be required is a planful approach for meeting the total need at some future date and a fair way of handling applicants in the event of a shortage of spaces.

27 National Nutritional Foods Assn. v. Weinberger, 376 F. Supp. 142, vacated 512 F. 2d 688.

28 Review Committee, Venue VII, Commodity Stabilization Service, U.S. Department of Agriculture v. Willey, 276 F. 2d 264, certiorari denied 363 U.S. 827, 80 S. Ct. 1597.

29 Sims v. Board of Ed. of Independent School District No. 22. 329 F. Supp. 678.

30 Day Care Licensing and Regulation: A Program Evaluation, Illinois Economic and Fiscal Commission, October 1974, p. 1.

31 Kenneth Culp Davis. Discretionary Justice. U. of Ill., 1971, pp. 162 ff.

32 Monrad Paulsen, "The Licensing of Child-care Facilities," Alabama Law Review, 1968.

33 387 U.S. 523 (1967).

34 66 Cal. 2d 260, 425 P. 2d 223, 59 Cal. Rptr. 623 (1967).

35 Norton Grubb and Raymond Marks, "Child Care and the Limits of State Power in California," University of Calif. Berkeley, Feb. 1975.

36 Stanley v. Illinois, 405 U.S. 645 (1972).

37 For a fuller discussion of these issues, see the author's "Alternatives for Regulating Family Day Care Homes," DCCDCA, 1974.

38 Linda McCauley, "Registration of Family Day Care Homes in Massachusetts," June 1975.

39 Petition 465428-7, filed June 5, 1975 in Superior Court, California in and for the county of Alameda.

40 Fuller critique of FIDCR is made in the unabridged version of this paper.

41 The Office of Child Development is engaged in research through Abt Associates studying child-staff ratios and staff professionalism in centers and in family day care.

42 Op. cit., p. 3,7.

43 Day Care Consultation Service, Bank Street College of Education, Toward Comprehensive Child Care, 1975, DCCDCA, p. 42

44 Guides to Day Care Licensing, OCD, 1972. A critique of this material is included in the unabridged version of this paper.

45 Day Care Licensing Policies and Practices, Education Commission for the States, Report No. 72, July 1975.

46 Edna Hopkins, "State Day Care Licensing Regulations and Federal Interagency Day Care Requirements, Day Care Centers," 29 May 1975.

47 Bernstein, Marver H., Regulating Business by Independent Commission, Princeton University Press, 1955, Ch. 2.

48 "Day Care Licensing Policies and Practices," Education Commission of the States, Report #72, Denver, 1975.

49 Massachusetts Rate Setting Commission, Maximum Allowable Rate Schedule - Day Care Center Program - Infants - Toddlers - Pre-School - School Age. The Commission establishes a maximum for each center based on documented historical costs, and reflecting the variability in day care costs through 8 line items. The purchasing agency then bargains for a rate considerably below this, in an arbitrary process.

50 Dennis R. Young and Richard Nelson, Public Policy for Day Care of Young Children, 1973, Lexington, Mass: D. C. Heath.

51 See Bergstrom, Joan and Morgan, Gwen, op. cit. pp. 2-3.

BIBLIOGRAPHY

Abt Associates, Inc., A Study in Child Care, 1970-71, 4 vols., Cambridge, Mass. 1971.

American Academy of Pediatrics, Standards for Day Care Centers for Infants and Children Under 3 Years of Age, 1971.

Anderson, James E., The Emergence of the Modern Regulatory State, Washington, D.C. 1962.

Gertrude Binder and Norris E. Class, "The Regulatory Responsibility in Public Welfare," Social Casework, New York, Family Service Association of America, 1957.

Patricia G. Bourne et al., "Day Care Nightmare," Working Paper No. 145, Institute of Urban and Regional Development, University of California at Berkeley, February, 1971.

Urie Bronfenbrenner, "Who Cares for America's Children?" Testimony Before a Joint House-Senate Hearing on the Child and Family Services Act of 1975, Washington, D.C.

Busch, Carolyn D., "Statutory Alternatives in the Development of an Effective Legal Framework for the Licensure of Day Care Facilities for Children," Texas Day Care Licensing Forum, 1974.

Petition for Writ of Mandamus, Injunctive and Declaratory Relief #465428-7. In the Superior Court of the State of California,in and for the County of Alameda, Filed June 5, 1975.

California Office of Educational Liaison, "Child Care, the Final Report," December 1975.

California Department of Health, "Licensing Procedure Memo No. 38: Self-Certification, Children's Day Care," October 10, 1975.

California Child Day Care Licensing Task Force, Report and Recommendations, May 31, 1975.

Norris Class, "Basic Issues in Day Care Licensing," given at Annual Meeting of the National Association for the Education of Young Children, Minneapolis, Nov. 5, 1971.

Norris E. Class, Growing Up in the 70's, A Policy Statement for a System of State and County Departments of Children and Parents' Services, California Legislature Assembly Office of Research, Sacramento, August 1975.

Norris E. Class, Licensing of Child Care Facilities by State Welfare Departments, U.S. Department of Health, Education and Welfare, Children's Bureau publication #462, Washington, D.C., 1968.

Norris E. Class, "Safeguarding Day Care Through Regulatory Programs; The Need for a Multiple Approach," paper given at Seattle Conference of National Association for the Education of Young Children, 1973.

Child Welfare League of America, Inc., Standards for Day Care Service, Revised edition, New York 1969.

Jacqueline T. Cook, "Voucher Payment System for Day Care," unpublished position paper, 1975.

Center for the Study of Public Policy, An Impact Study of Day Care, Feasibility Report and Manual for Community Planners, Cambridge, Mass., Feb. 1971.

Kenneth Culp Davis, Administrative Law, St. Paul, Minn., West Publishing, 1951.

Kenneth Culp Davis, Discretionary Justice: A Preliminary Inquiry, Baton Rouge, Louisiana State University Press, 1969; University of Illinois Press, 1971.

Day Care and Child Development Council of America, Mothers in Paid Employment, Washington, D.C., 1974.

Day Care and Child Development Council of America, "Changes Made in Proposed Staff Child Ratios" Voice for Children, June-July 1975.

Day Care and Child Development Council of America, "Lawsuits in Day Care," Voice for Children, September 1975.

Lloyd de Mause, ed., The History of Childhood, Harper and Row, New York, 1974.

Education Commission for the States, The Role of the Family in Child Development, Implications for State Policies and Programs, Report No. 57, Denver, December 1975.

Arthur Emlen, "The Nature of Rights," presented to Socratic Society, Portland State University, Portland, April 1969.

Encyclopedia of Social Sciences, "Legal and Political Science Concepts Necessary to an Understanding of Child Care Licensing, compilation of material by Edna Hughes, DHEW - OCD, mineo.

Greta G. Fein and Alison Clarke-Stewart, Day Care in Context, New York, Wiley, 1973.

Harold and Margaret Feldman, Effect of Welfare Women's Working on their Family, Cornell University for the U.S. Department of Labor, January 1972.

Henry H. Foster and Doris J. Freed, "A Bill of Rights for Children," Family Law Quarterly pp. 343-375, also appeared in New York Law Journal, July 28, August 25, and September 22, 1972.

Lawrence K. Frank, The Fundamental Needs of the Child, 1938.

Freund, Ernst, "Licensing", Encyclopedia of the Social Sciences, Vol. IX, 1935, pp. 447-452.

Freund, Ernest, Administrative Powers Over Persons and Property: A Comparative Survey, Chicago: The University of Chicago Press, 1928.

Rolland Gerhart, "A Question of Regulating," 1975, Vermont Office of Child Development.

Rolland Gerhart, "Federal Interagency Day Care Requirements: An Outmoded Strategy," Montpelier, Vermont, Office of Child Development, 1975.

Cornelia Goldsmith, "The Beginnings of Things," BAEYC Reports, Vol. XVII, No. 2 Dec/Jan. 1975-76, Weston, Mass.

Great Lakes Regional Licensing Workship #6, Licensing Power, Zion, Illinois, Feb. 1971.

Great Lakes Regional Licensing Workship #8, The Liberation of Licensing, Smithville, Indiana, Oct., 1974.

W. Norton Grubb and F. Raymond Marks, "Preliminary: Child Care and the Limits of State Power in California," Childhood and Government Project, U. of California, Berkeley, Feb. 1975.

Norton Grubb, "Testimony Relating to Senate Bill 785 Before the Senate Finance Committee," Childhood and Government Project, University of California, Berkeley, June, 1975.

Elinor Guggenheimer, "Public Welfare's Role in Day Care for Children, Children May-June 1962.

Walter F. Mondale with Floyd E. Haberkorn, "An Interview with Senator Walter F. Mondale," Young Chidren, Vol. XXXI, No.2, Janaury 1976.

Nora Harlow, Sharing the Children, Harper and Row, New York 1975.

Mary C. Howell, "Employed Mothers and their Families." Pediatrics, Vol. 52, No. 2, August 1973, pp. 252-343.

Mary Howell, Helping Ourselves, 1976.

Edna Hopkins, "State Day Care Licensing Regulations and Federal Interagency Day Care Requirements for Day Care Centers," DHEW, OCD, May 29, 1975.

Edna Hughes, "Licensing in Day Care, Baseline of Quality, Changing Perceptions and Practices in State Regulation," 1975.

Edna Hughes, "Principles Related to Formulation of Child Care Licensing Standards," 1975.

Edna Hughes, "The Social-Legal Basis of Family Licensure in Child Day Care," 1975.

Edna Hughes, "Safeguarding the Public Interest in Child Day Care," July 28, 1975.

Edna Hughes, "Some Historical Aspects of Child Foster Care Licensing," 1965.

Inner-City Fund, Estimated Cost of the Federal Day Care Requirements, 1972.

Illinois Economic and Fiscal Commission, Day Care Licensing and Regulation: A Program Evaluation, 1974.

Jamber, Harold A. "Theory and Practice in Agency Participation in the Formulation of Child Care Licensing Standards," reprinted in Child Welfare, Dec. 1964.

Tom Keating, Child Care and Public Policy, A Dilemma at All Levels, Claremont, California, July 1975.

Kenneth Keniston, "Family Income Support," Address to NCOCY, Washington, D.C. Feb. 2, 1976.

May Dublin Keyserling, Windows on Day Care, New York, National Council of Jewish Women, 1972.

James M. Landis, The Administrative Process, New Haven, Yale University Press, 1938.

Sheila B. Kamerman and Alfred J. Kahn, "Explorations in Family Policy," Social Work, May, 1976.

Learning Institute of North Carolina, Who Cares for Children? A Survey of Child Care Services in North Carolina, Durham, N.C. April 1974.

Vivian Lewis, "Day Care: Needs, Costs, Benefits, Alternatives." in Studies in Public Welfare, Paper No. 7, Issues in the Coordination of Public Welfare Programs, a volume of studies prepared for the use of the Subcommittee on Fiscal Policy of the Joint Economic Committee of the U.S. Congress, July 2, 1973.

C.E. Lindblom, "The Science of Muddling Through," in Business Strategy, ed. H. Igor Ansoff, Penguin Books, 1969, p. 41ff.

Linda McCauley, "Registration of Family Day Care Homes in Massachusetts," Family Day Care Licensing, Boston, Mass. Office for Children, 1975.

Margo Melli, "Legal Issues in the Enforcement of Regulation in Health and Welfare," in Iris R. Winograd, ed., Delivery of Services in a Regulated Society, Milwaukee, University of Wisconsin Social Work, August 1974, pp. 23-32.

Michigan Department of Social Services, "Demonstration Project for the Regulation of Family Day Care Homes, (Interim Report), February 12, 1976.

Gwen Morgan, "Alternatives for the Regulation of Family Day Care Homes for Children" DCCDCA, Washington, D.C. 1974.

Gwen Morgan, "Alternatives for Regulating Family Day Care Home in Texas," Texas Day Care Licensing Forum, 1974.

Gwen Morgan, "Comments on Proposed Rules and Regulations and Statute for New Jersey," December 16, 1974, memo to Robert Udell.

Gwen Morgan, "Evolving Ideas About Play; the Politics of Childhood" Boston, Wheelock College, 1975.

Gwen Morgan, "Guaranteeing Quality in Child Care," State Services in Child Development, Regional Conference Highlights, Spring 1975, Education Commission of the States, Report No. 75, November 1975, Denver.

Gwen Morgan, "Identification of Issues Raised in the Task Force Reports, Models for Day Care Licensing," Executive Office for Administration and Finance, Office of Planning and Program Coordination, Commonwealth of Mass, Boston, Nov. 16, 1971.

Gwen Morgan,"Issues in the Delivery of Day Care Services," DCCDCA, July 25, 1971.

Morgan, Gwen, "Licensing: It's Time to Change the Rules on Regulations," New York, Day Care and Early Education, Sept. 1974.

Morgan, Gwen, "Regulation of Early Childhood Programs," Washington, D.C. DCCDCA, 1971.

Gwen Morgan, "Task Force on Day Care Regulations, Some Issues," memo to Dorothy Taylor and Richard Rowe, April 13, 1975.

Gwen Morgan and Geraldine Polansky, "Family Day Care: Questions We Get Asked," in draft, 1975.

Joan Bergstrom and Gwen Morgan, "Issues in the Design of a Delivery System for Day Care and Child Development Services to Children and Their Families," Washington, DCCDCA, May 1975.

George Robinson, Day Care Licensing Survey, Social Services Board, Bismark N.D.

National Planning Association, "Qualification Requirements for Staffing Day Care by Region and State," Washington D.C., National Planning Association, 1973.

Oakland, California City Planning Department, Day Care Facilities for the Children of Oakland, A Study of Neighbors' Attitudes, January 1966.

Monrad G. Paulsen, "The Licensing of Child Care Facilities - A Look at the Law," Alabama Law Review, Vol. 21, No. 1, Fall 1968, pp. 1-24.

Joseph Perreault, "Issues in the Funding of Child Care," Kentucky Youth Research Center, Frankfort, Kentucky, 1975.

Joseph Perreault, "Issues in the Funding of a Large Scale Child Development Project," Kentucky Youth Research Center, Frankfort, Kentucky, 1975.

Jean Piaget, To Understand is to Invent. The Future of Education. N.Y., Viking, 1974.

Frances Fox Piven and Richard A. Cloward, "The Relief of Welfare," in Transaction, Vol. 8. New Brunswick, N.J., May 1971, pp. 31-9, 52-53.

Frances Fox Piven and Richard A. Cloward, Regulating the Poor.

Elizabeth Prescott, Cynthia Milich and Elizabeth Jones, Day Care. Vol. 1, The Politics of Day Care; Vol. II, Day Care as a Child-Rearing Environment, Washington D.C. NAEYC, 1972.

Martin Rein, "Values, Knowledge, and Social Policy," in Sheldon White et al., Federal Programs for Young Children: Review and Recommendations, Huron Institute, 1973, Appendix IIID.

Mary Reistroffer and Florence McGuire,"Implementation of Regulatory Law: Licensing for Effective Delivery of Services," in Iris Winograd, ed., Delivery of Services in a Regulated Society, Milwaukee, University of Wisconsin School of Social Work, 1971, p. 53.

Hillary Rodham, "Children Under the Law," Harvard Educational Review, Vol. 43, No. 4, 1973, p. 487.

Richard R. Rowe, Child Care in Massachusetts. The Public Responsibility. Boston, Massachusetts Early Education Project, 1972.

Richard Rowe, "Feasibility of Federal Certification of State Standards for Federally Supported Day Care as an Alternative to FIDCR," American Institutes for Research, Cambridge, Mass. April 1976.

Florence Ruderman, Child Care and Working Mothers, New York, Child Welfare League, 1958.

June S. Sale and Yolanda Torres, "I'm Not Just A Babysitter," A Descriptive Report of the Community Family Day Care Project, DCCDCA, 1972.

Charles L. Schultze, Edward R. Fried, Alice M. Rivlin, Nancy H. Teeters, Setting National Priorities: The 1973 Budget, Chapter 8, "Child Care," The Brookings Institution, 1972. pp. 252-90.

Robert Sheehan and David E. Day, "Is Open Space Just Empty Space?" in Day Care and Early Education, New York, Nov./Dec. 1975, pp. 10-16.

Edward Shorter, The Making of the Modern Family, New York, Basic Books, 1975.

I.Evelyn Smith, "Development of the Licensing Function in Safeguarding Children," Washington, D.C. 1951.

A. Delafield Smith, The Right to Life, A Legal Approach to Society's Responsibility to the Individual, Chapel Hill, U. of N.C. Press, 1955.

Kurt J. Snapper, Harriet H. Barriga, Faye H. Baumgartner, Charles S. Wagner, The Status of Children, The Social Research Group, George Washington University, 1975.

Gilbert Steiner, The State of Welfare, Washington D.C. The Brookings Institution, 1971.

Margaret Steinfels, Who's Minding the Children. The History and Politics of Day Care in America, Simon and Shuster, 1973.

Bernard Stumbras, "Administrative Issues in Enforcement of Regulation in Health and Welfare Fields,"in Iris R. Winograd, ed., Delivery of Services in a Regulated Society, Milwaukee, Wisconsin, School of Social Welfare,the University of Wisconsin, August 1974, pp. 13-21.

Jule M. Sugarman, "Statement before the Select Committee on Education, U.S. House Education and Labor Committee," December 1, 1969.

Brian Sutton-Smith, "Play as Novelty Training," in Andrews, ed., One Child Indivisible, Washington, D.C., NAEYC 1975, p. 255 ff.

Nathan B. Talbot, Raising Chidren in Modern America, Little Brown, Boston, 1976.

_____"Guaranteeing Children's Rights Through Enforcement of Standards," Tufts Summer Institute in Day Care Licensing, June 1975.

_____"Making Day Care Licensing Effective", Tufts Summer Institute in Day Care Licensing, June 1974.

Zitha R. Turitz, "Development and Use of National Standards for Child Welfare Services," Child Welfare, May 1967.

Virginia Department of Welfare, Report on the Feasibility Study conducted by Consultants, to the Governor and the General Assembly of Virginia, Senate Document 11, Richmond, 1976.

Sheldon H. White et al., Federal Programs for Young Children: Review and Recommendations, 3 vol., Cambridge, Mass., the Huron Institute, 1973.

UNCO, Inc., "Indicators of Satisfactory Compliance with Federal Interagency Day Care Requirements. A Guide for Monitoring." Arlington, Va., 1975.

Irving Weissman et al., "Guardianship - A Way of Fulfilling Public Responsibility for Children," Children's Bureau #330, 1949.

U.S. Department of HEW, Bureau of Family Services, Organization and Management in Public Assistance, The State Agency Responsibility for Local Operations: Administrative Supervision, 1964.

U.S. Department of HEW, "State Estimates of Increased Costs and Staff under Title XX to Meet FIDCR Staff Ratios Fully" 1976.

U.S. Department of HEW, Children's Bureau, Report on Day Care. Meeting of Representatives of State Advisory Committees on Day Care Services and State Departments of Public Welfare, March 19, 20, 1964.

U.S. Department of HEW, Children's Bureau, "It's Your Children's Bureau," CH publication #257, revised 1964.

U.S. Department of HEW, "A Changing World," 1960.

U.S. Department of HEW,"Child Care," 1971.

U.S. Department of HEW, Office of Child Development, "Abstracts of State Day Care Licensing Requirements, Part 2 Day Care Centers," OCD Publication #72-12, 1971.

U.S. Department of HEW, Children's Bureau, "White House Conference on Children in a Democracy, Jan. 18-20. 1940, Final Report," CB Publication #272, 1942.

A. Weinberg, ed., The Muckrakers.

Burton L. White, The First Three Years of Life,Englewood, N.J., Prentice-Hall, 1975.

Ann Willis and Henry Ricciuti, "A Good Beginning for Babies: Guidelines for Group Care." Cornell Research Program in Early Development and Education, Ithaca, Cornell University, 1974.

Mrs. Mary Nell York and Miss Kathy Cleary, "A History of the White House Conference on Children and Youth, 1970.

Dennis R. Young and Stephen Finch, The Voluntary Child Care System in New York: Sectoral Trends and Agency Operations, Stony Brook, Institute for Urban Science Research, State University of New York, 1974.

Dennis R. Young and Richard R. Helson, Public Policy for Day Care of Young Children, Organization, Finance, and Planning, D.C. Health, Lexington, Mass., 1973.

Newspaper articles and stories:

_____ "The Artesia Affair" The Texas Observer, 1973

Mary Rice Brogan, "Solon Places Blame for Poor Child Care," Houston Chronicle, March 27, 1974. pp. 1 and 5.

Iver Peterson, "State Acts to Cut Day Care Center Costs," New York Times, Feb. 6, 1976.

Edward Ranzol, "Panel Finds Incompetence in City Day Care Program, New York Times, March 10, 1976, p. 1.

Nathaniel Sheppard, Jr., "7200 Families are Taken Off Day Care in Toughening of the Rule on Income," New York Times, April 1, 1976, p. 35.

Joseph R. Tybor, "Illinois Ruled Liable for Fraud by Defunct S&L" The Denver Post, May 15, 1973, p.7.

Charles N. Wheeler, "Report Charges State Negligent in Regulation of Day Care," Chicago Sun-Times, Nov. 21, 1974, p. 10.